

REPRESENTATIVE FOR PETITIONER:

Timothy R. Kuiper, Attorney, Austgen, Kuiper & Associates, P.C.

REPRESENTATIVES FOR RESPONDENT:

Sharon Fleming, Director of Non-Profit Division, Lake County Assessor

Carl Speichert, Hanover Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

CEDAR LAKE

CONFERENCE ASSOCIATION)

Petition No.: 45-014-00-2-8-00001

Parcel No.: 30-24-0011-0039

Petitioner,)

v.)

County: Lake

Township: Hanover

LAKE COUNTY)

PROPERTY TAX ASSESSMENT)

BOARD OF APPEALS,)

Assessment Year: 2000

Respondent.)

Appeal from the Final Determination of
Lake County Property Tax Assessment Board of Appeals

January 4, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board is whether the subject property is owned, occupied and used for a religious purposes and is therefore entitled to a property tax exemption under Ind. Code § 6 -1.1-10-16.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Timothy Kuiper, on behalf of Cedar Lake Conference Association (the Petitioner) filed a Form 132 Petition for Review of Exemption on July 14, 2005, petitioning the Board to conduct an administrative review of the above petition. The determination of the Lake County Property Tax Assessment Board of Appeals (the PTABOA) was issued on June 15, 2005.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on October 23, 2006, in Crown Point, Indiana before Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2.
4. Persons sworn in and present at the hearing:

For the Petitioner:

Sanusi Mutuwa, Business Director, Cedar Lake Conference Association
B. Lee Maize, Executive Director, Cedar Lake Conference Association
Luke A. Schowalter, Secretary, Cedar Lake Conference Association

For the Respondent:

Sharon Fleming, Director, Non-Profit Division, Lake County Assessor
Deborah Smith, Staff Member, Lake County Assessor

Carl Speichert, Hanover Township Assessor

David Brown, Deputy, Hanover Township Assessor

5. The Petitioner submitted the following evidence:

Petitioner Exhibit 1 – Petitioner’s property tax exemption memorandum of law,
Petitioner Exhibit 2 – Notebook containing the following items:

Tab 1 – Form 132 petition,

Tab 2 – Form 120 – Notice of Action on Exemption Application; five exterior photographs of the subject; PTABOA request for site inspection; 1995 subject property record card (PRC), map of property owned by Cedar Lake Conference Center; Form 136 – Application for Property Tax Exemption (Form 136);

Tab 3 – Form 136 for 2000 payable 2001; letter from Internal Revenue Service recognizing Cedar Lake Conference Association is a 501(c) (3) organization dated December 7, 2004; Articles of Incorporation, dated October 20, 1977; Articles of Acceptance, dated October 8, 1977; Restatement of Articles of Incorporation;

Tab 4 – Internal Revenue Service – Form 990, Form 4562 and Form 8868; Indiana Department of Revenue – Not-For-Profit Organization’s Annual Gross Income Tax Exemption Report – Form IT - 35AR;

Tab 5 – Form 136 for 2000 payable 2001; Real Property Maintenance Report;

Tab 6 – Letter from Sharon Fleming, Lake County to Cedar Lake Conference Association, dated February 15, 2005;

Tab 7 – Letter from Sharon Fleming, Lake County to Cedar Lake Conference Association, dated February 15, 2005; Form 136 for 1996; 2003 pay 2004 Real Property Maintenance Report; map of

Cedar Lake Conference Association property; 2002 subject property's PRC; Lake County Board of Review's 1996 approval of property tax exemption; brochure from Cedar Lake Bible Conference Center;

Tab 8 – Affidavit of RV Park Use from Sanusi Mutuwa, Business and IT Director, Cedar Lake Conference Association; Cedar Lake Bible Conference Center RV Park Income Report for January through December 2000;

Petitioner Exhibit 3 – Map of property owned by Cedar Lake Conference Association prepared by Missionary Tech Team, dated May 24, 1999.

6. The Respondent submitted the following evidence:

Respondent Exhibit 1 – Letter from Sharon Fleming, Lake County to Austgen, Kuiper & Associates, P.C., dated October 17, 2006.

7. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

Board Exhibit A – Form 132 petition with attachments,

Board Exhibit B – Notice of Hearing on Petition,

Board Exhibit C – Order Regarding Conduct of Exemption Hearing,

Board Exhibit D – Hearing sign-in sheet.

8. The property under review consists of 27.678 acres of vacant land, located at 8816 West 137th Street, Cedar Lake, Hanover Township, in Lake County.

9. The ALJ did not conduct an on-site visit of the property.

10. For 2000, the PTABOA determined the land to be 0% exempt and 100% taxable.
11. For 2000, the Petitioner contends the subject land should be 100% tax-exempt.

Jurisdictional Framework

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

Administrative Review and Petitioner's Burden

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.; Meridian Towers*, 805 N.E.2d at 479.

Basis of Exemption and Burden

16. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.

17. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).

18. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).

19. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Discussion of Issue

20. The Petitioner contends that the subject property should be 100% exempt from property taxation under Ind. Code § 6-1.1-10-16, because the activities on the premises are done in order to provide an opportunity to be immersed in nature to relax, reflect, nurture spiritual rejuvenation and to promote Christian principles to youth and adults in a camp environment. *Kuiper argument.*

21. In support of this contention, the Petitioner presented the following testimony and other evidence:
 - a. The Petitioner's representative testified that the subject property is 27.678 acres that contains a RV park with a bathhouse, soccer fields, archery range, walking trail and prayer garden that is used by churches, prison ministries and other non-profit entities. *Kuiper argument; Petitioner Exhibit 2, Tabs 1 & 7.* According to the Petitioner, the parcel is an integral part of the Cedar Lake Conference Center and its ministry. *Kuiper argument.*

 - b. The Petitioner's representative testified that Cedar Lake Conference Association is a 501(c)(3) exempt entity. *Kuiper argument; Petitioner Exhibit 2, Tab 3.* Further, according to its Restatement of Articles of Incorporation, the purpose of the Association is "to conduct religious services and promote religious education." *Id.*

 - c. The Petitioner further contends that the subject property's "predominant use" is religious. *Kuiper argument.* According to the Petitioner, the RV Park is a very small portion of the conference center. *Id.* Further, the income received from non-affiliated members of the Cedar Lake Conference Association for use of the RV Park in 2000 was 32.8%, but only .25% of the total revenue for the

Conference Center.¹ *Id.*; *Petitioner Exhibit 2, Tab 8*. Therefore, the Petitioner argues, the property is entitled to a 100% exemption because it is predominately used for religious purposes. *Id.*

- d. Finally, the Petitioner argues that the property was determined to be 100% exempt in 1996, and should also be held to be exempt for 2000. *Kuiper argument*.
 - e. In response to the Respondent's argument that the property is vacant land, the Petitioner's representative testified that there is a bathhouse on the property that is part of the "religious purpose" of having a campground and recreational activities on the subject property. *Id.*
22. Respondent contends the petition for exemption was denied because the 27.678 acres is a vacant parcel of land used as an RV park. *Fleming testimony*. The Respondent further contends that the Petitioner failed to demonstrate progress toward erecting a building as required by Ind. Code § 6-1.1-10-16. *Id.*; *Board Exhibit A*. A witness for the Respondent, however, agreed that the bathhouse was physically located on the parcel, but was not assessed to the property. *Speichert testimony*.

Analysis

23. For property tax exemption, a property must be predominately used or occupied for an exempt purpose. Ind. Code § 6-1.1-10-36.3. The Indiana General Assembly has provided that "[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes." Ind. Code § 6-1.1-10-16(a). Similarly, a tract of land is exempt if "a building that is exempt under subsection (a) or (b) is situated on it. ..." Ind. Code § 6-1.1-10-16(c).

¹ The Petitioner's witness testified that the Cedar Lake Conference Association also owns an adjacent 44 acre parcel used for religious activities and education. *Mutuwa testimony*. According to the Petitioner, the total operational income for the Conference Center was \$1,089,439 and the income received from non-affiliated members for use of the RV Park was \$2,679 or .74% of the total revenue for the year of 2000. *Mutuwa testimony*; *Petitioner Exhibit 2, Tab 8*.

24. Here, the Petitioner contends that the subject property is entitled to 100% exemption because it is owned, occupied, and used for religious purposes. The Petitioner's representative testified that the subject property contains a RV park with a bathhouse, soccer fields, archery range, walking trail and prayer garden that is used by churches, prison ministries and other non-profit entities. *Kuiper argument; Petitioner Exhibit 2, Tabs 1 & 7.* According to the Petitioner, the parcel is an integral part of the conference center complex and its ministry. *Kuiper argument.* The Petitioner argues that the use of the property is to provide individuals and families a place to relax, reflect, and nurture spiritual rejuvenation and growth. *Id.* According to the Petitioner, the Cedar Lake Conference Association promotes Christian principles to youth and adults in a camp environment. *Id.* The guests generally pay \$19.00 to \$22.00 per night for a campsite in the RV Park. *Petitioner Exhibit 2, Tab 7.*
25. While the evidence establishes that Cedar Lake Bible Conference Center RV Park & Campground is a place where individuals can have rewarding time with family and is a place to relax and reflect, it also establishes that the focus of the property is on general relaxation and activities such as swimming, fishing, volleyball, basketball, horseshoes, tennis, boating and golf. The Petitioner failed to prove that those are predominantly religious uses. *See State Board of Tax Commissioners v. Ft. Wayne Sports Club, Inc.* 258 N.E.2d 874, 882 (Ind. App. Ct. 1970) (holding record insufficient to establish educational purpose where athletic activities were dominant purpose of property).
26. Moreover, a taxpayer must present more than anecdotal type information to prove that property is entitled to an exemption. The statutory focal point of predominant use is fairly straightforward. The onus is on taxpayers to produce detailed facility usage reports with supporting documentation of exempt use. *State Board of Tax Commissioners v. New Castle Lodge*, 765 N.E.2d 1257, 1264 (Ind. 2002). Here, the Cedar Lake Conference Association has not provided the type of documentation that would support an exemption for the 27.678 acres of land. Although the Petitioner offered testimony that

some religious activities occur such as prayer, walking through the prayer garden and nurturing spiritual rejuvenation in a camp environment, the Petitioner provided no breakdown of the time spent on such religious activities and the time spent on other non-religious activities. Thus, it is impossible for the Board to determine predominant use or grant any exemption.

27. Further, exemption is tied to use of the property, not the status of the owner. *See College Corner v. Department of Local Government Finance*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006); *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997). Indeed, Article X, § 1 of the Indiana Constitution clearly “contemplates the character and purpose of the property that may be exempted from taxation, not the character and purpose of the owner of the property.” *State ex rel. Tieman v. City of Indianapolis*, 69 Ind. 375, 376 (1879). Therefore, the fact that Cedar Lake Conference Association is a not-for-profit corporation and has been recognized as an exempt 501(c)(3) organization by the Internal Revenue Service, does not establish that it qualifies for an Indiana property tax exemption.
28. Finally, that the Association has received an exemption on the property in the past is not probative of the property’s right to exemption in the assessment year at issue. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm’rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property’s assessment in one tax year is not probative of its true tax value in a different tax year. *Id.*
29. The Petitioner failed to show that the subject property is owned, occupied and used for a religious purpose. Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Summary of Final Determination

30. The Petitioner failed to raise a prima facie case that the property is entitled to an exemption. The Board finds in favor of the Respondent.

The Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS-

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.